

BOARD OF ZONING APPEALS

Minutes

May 25, 1999

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:35 p.m., on May 25, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, JOHN ROGERS, RANDY PHILLIPS, FLOYD PITTS and JUANITA SWANN WERE PRESENT. KEITH ALTER and DOUG MALONE were absent.

The following Planning Department staff members were present: Secretary, DALE MILLER, and Recording Secretary, ROSE SIMMERING.

Also present was Kurt Schroeder, City Zoning Administrator, Office of Central Inspection, SHARON DICKGRAFE, Law Department.

FOSTER, called the regular meeting of the Board of Zoning Appeals to order at 1:35 time p.m.

It was recognized that there were 5 voting members present which establishes a quorum.

- 1. Approval of minutes of February 23, 1999.** Do the members have any changes?

PITTS: On page 58, in response to the subject was anything else being done in the area 21st Street. I probably did say it unintentionally and it is wrong if I did. I would like to know if we can just scratch that, since there was no response to it or anything leading up to it.

FOSTER: Do the members have any objection to deleting that? They could be corrected. There are several places where chairman and chairmen seem to intermingle, do a global area search and change that. There is one correction that I do think we ought to really look at because it may be important to the case and the Appeal that was made. On page 6 at the bottom, Mr. Schroeder is speaking and do you see down below where it says "Building is any structure used defining things." "This kind of storage is a use defined in the building code." I wonder if that wasn't meant to say "This kind of structure." I did not know we were talking about storage.

MILLER: Probably was structure.

FOSTER: Why don't we leave that and then it continues on which is a quote and it says in the next sentence, "Structure is that which is built or constructed." I think that is "an" instead of "and" I think it would be worth just checking that area there, Rose with Kurt and just see because, he is quoting things there that are important to the definition of the case that was involved at that time.

SIMMERING: Yes Sir.

FOSTER: On page 11 halfway down on the right hand side. See a sentence that reads, "It is not the kind of thing you would want to be proud for an Inn at Tallgrass." I think you want a "of" in there.

SIMMERING: Yes Sir.

FOSTER: I think that is all I have. Mr. Phillips has joined us. Do you have any changes in regards to the minutes of February 23, 1999?

PHILLIPS: No.

MOTION: PHILLIPS moves and PITTS seconded to approve the minutes for February 23, 1999 with the corrections being made.

MOTION CARRIES 5-0.

FOSTER: Today we have two cases. One is a variance and one is an Appeal that we have heard before. Beginning on the variance case BZA No. 14-99. A variance request to the reduction or parking from 99 to 32 spaces.

2. **Case No. BZA 14-99** – Richard Vliet pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to allow a reduction of parking requirement to allow development of property legally described as follows:

Parcel #1: Lots 173, 175, 177, 179, 181, and 185, on Douglas Avenue, in Gould's Subdivision in Hyde's Addition to the City of Wichita, Kansas, Sedgwick County, Kansas.

AND

Parcel #2: Lot 171, on Douglas Avenue, in Hyde's Addition to the City of Wichita, Sedgwick County, Kansas.

Generally located at the corner of Ellis and Douglas.

MILLER: Presents staff's report and shows slides.

BACKGROUND: The applicant is remodeling a 24,750 square foot, two story building. The applicant expects the remodeled space to be leased primarily to professional office users. If the site were occupied by office users, the applicant would need to provide 99 spaces. The **A**Unified Zoning Code requires one parking space for every 250 square feet of office or retail space. This site was originally a laundry. The applicant indicates the laundry employed 70 people. The original laundry building mostly covered the entire site, however as part of the remodeling project, the rear portion of the building was removed to make room for 32 parking spaces. Currently the entire second floor (7,000 square feet) has been leased to an advertising firm with 12 employees. The two other current leases have a total of 7 employees in 2,500 square feet of space. The property is located south of Douglas and west of Hydraulic. This .69 acre tract is currently zoned **ALI** Limited Industrial. Recently, the applicant has been able to obtain an additional 20 parking spaces, on a month-to-month basis, on McCormick Armstrong property located just east of the application area. There are approximately 10-15 on-street spaces along Douglas, as well.

In an earlier 1998 request, the applicant requested a reduction in the number of parking spaces from 99 to 32. The applicant and staff reached a compromise on conditions of approval. The compromise allowed the applicant to open only 9,500 square feet of the total building. The space was to be used for offices. This would allow tenants, which the applicant currently had under contract, to locate within this building sometime in June 1998. This compromise allowed the applicant a chance to obtain additional parking, as well as allowed staff to determine any other possible solutions to the parking problem in this area.

One possibility suggested with the earlier case was possibility of the establishment of a **A**parking district similar to the one in operation in Old Town, where off-street requirements are waived if property owners in the district pay a fee to the City or submit a petition agreeing to special assessments in the future that can be used in the future to acquire land and develop **A**public off-street parking lots. However, it would be very complicated to draft a petition that would be suitable. In addition, there does not seem to be other development interest in this area, and the applicant in agreeable to limiting the use of this property to help control the parking demand.

Another parking variance request was granted in 1994 to the Spice Merchant located at the corner of Douglas and Cleveland. This variance reduced the parking requirement from 57 to 3 parking spaces but the applicant had an agreement to lease 39 parking spaces just north of this area.

The site is surrounded by commercial and office developments. The only additional off-street parking in the area was located just southwest of this site and also at McCormick Armstrong, which is located just east of this site.

ADJACENT ZONING AND LAND USE:

NORTH	"LI"	Commercial uses
SOUTH	"LI"	Commercial and Offices
EAST	"LI"	Commercial and Offices
WEST	"LI"	Commercial and Offices

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as it is located within an inner city business area which was developed at a time which did not require on-site parking in relation to the size and use of development. Also no additional parking can be provided on-site without removing more of the existing structure.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the owner demolished a large portion of this building to provide 32 parking spaces on-site which will provide more parking for the area than the previous use of this building. Further, an adjacent property has agreed to allow the applicant to use 20 of their spaces on a month-to-month basis.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as there is no other location on this lot to construct additional parking spaces. In order for the owner to meet the parking demand, he would have to tear down most of the remaining building and replace it with a parking lot.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the building has not provided on-site parking previously. The applicant has remodeled this structure in an attempt to provide on-site parking. The applicant has obtained additional parking in the area, but there is not much undeveloped land available for parking. This area is an older neighborhood developed with many commercial properties and offices which do not have sufficient parking. This applicant is trying to meet the parking requirements of the Zoning Code but is unable. The Comprehensive Plan, as well as the City, acknowledges the need to retain and bring new employment to the downtown area. This redevelopment would help revitalize this general area.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as this development is in an area which was developed before the zoning regulations came into effect, and the applicant has tried for over a year to find additional, off-site permanent parking.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance from 99 to 32 spaces be granted, subject to the following conditions:

1. This application makes BZA 7-98 null and void.
2. The use of the building shall be limited to office, apartments and/or retail space, with no more than 4,000 square feet of retail space, or 7,000 square feet of space restricted to furniture sales and art gallery and no more than a total of 40 employees and/or dwelling units, unless additional parking is provided within 600 feet of the property on a lease basis, in which case one additional employee or dwelling unit is permitted for each additional parking space.
3. The parking area shall be paved, striped and maintained in accordance with the approved site plan.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FOSTER: Dale when someone does use off premises parking, do they have to go through another step within that 600 foot to obtain approval for that?

MILLER: No. As long as it is within the 600 feet there is not another permit or anything like that. Usually what happens is when the Plans Reviewer is reviewing the plans and he notes how many parking spaces they are suppose to have. If it does not show up onsite then he looks for where is the rest of this parking is going to come from and if it is not there then he requests the documentation that it is a long-term lease or long- term rent arrangement.

FOSTER: Any questions for the staff from the Board? Thank you Dale. We will open this up to the applicant, if you would give your name and address. I am going to ask you if you have read the staff report and have any corrections or defer with it. Do you have any problem with the conditions?

RICHARD VILET, 4200 E DOUGLAS, I am the managing member of 1425 E. Douglas, L.L.C., which is the ownership entity for the building. I do agree with staff recommendations and the CPO recommendation that we met with last night. This has been an interesting building to renovate. Because it has such a connection to the neighborhood around it and as we have undergone renovation by your initial variance support we have seen things in the neighborhood that have changed. In fact McCormick Armstrong has been supportive of our efforts is now undergoing a complete renovation of their building. Because of what we did I think a little of the tone was set. My feeling is that these buildings are real important to the character downtown and need to be retained and I think that Dale and Marvin, have agreed that we can't have parking lots overrun the sort of character of the area. That is somewhat at issue in that all these buildings have such uniqueness to the whole Wichita area that they need to be retained. We do not need to be tearing them down just to support parking. I think maybe within the next year or so you might see a request for dialogue parking all along Douglas from Washington to Hydraulic. That street being very wide and it could support that and again add more character to the downtown area which strengthen the cores ability to compete with the suburbs. Again it has been an interesting building to renovate and I appreciate your hopeful support of our request for variance. If you have any questions I will be glad to answer them.

FOSTER: Mr. Vilet, are there any other structures right around say a block around it that have any high parking ratios and so forth other than McCormick Armstrong?

VILET: I think the majority of them do. I think as Dale sort of submitted in his notes to you. Like the domestic laundry building here at one time had sixty or seventy employees and no parking. I think in the earlier years they provided the building and felt that people would park on Douglas or park on the side streets and it wasn't really a problem. There really wasn't such a commitment to automobiles. So I think that you will find that hopefully I have answered your questions but I think you would find that there are a number of buildings that do not have the ability without tearing some of the structure down to provide parking. If they were to undergo a renovation to bring them to code so I think it is something that the Planning Department is looking at to try and address.

FOSTER: Any other questions from the members? It seems to be a good day for you Mr. Vilet. Is there anybody in the audience to speak to this application. We will contain the discussion to the Board. Are there any comments? We have been through this particular one before. It is just that the anty has been raised.

PHILLIPS: My only comment is that it was present then and has been able to work with the applicant.

FOSTER: If we are going to use those buildings down there we probably are going to have to get used to it.

MOTION: PHILLIPS moves PITTS seconded that the Board accept the findings of fact as set forth in the Secretary's Report, and all five conditions set out in the section 2.12.590.B of the code as necessary for the granting of a variance have been found to exist, and the variance be granted subject to the conditions set out in the Secretary's Report. With the Amendment to #2 of the condition for recommendation and that it should read that the use of the building should be used to office apartments, and or retail space with up to 7,000 square foot of retail space for furniture sales and art gallery.

FOSTER: May I interrupt you. Do we leave in Dale the 4,000 retail space or does the other substitute it?

MILLER: It is a kind of case of either or, is what it is.

PHILLIPS: It is redundant if you leave it in there. If they are already going to 7,000 square feet that is your upper limit.

MILLER: What we are trying to do is say that the extra 3,000 square feet above the 4,000 retail was only acceptable because of the specific uses, the furniture sales and the gallery. With no more than 4,000 square feet of retail space but up to 7,000 square feet will be allowable for the addition of furniture sales and art gallery.

PITTS: Am I correct or not in assuming that the wording there would imply that an additional 7,000 square feet could be utilized for furniture sales and that is not including?

PHILLIPS: Up to a total.

FOSTER: Any further discussion? I would make the comment that I think the forty-employee standard gives us sort of a top here that adds to the square foot limitation. Is there further discussion?

MOTION: PHILLIPS moves and PITTS seconded that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report. With the Amendment to #2 as: The use of the building shall be limited to office, apartments and/or retail space, with no more than 4,00 square feet of retail space, but up to a total of 7,000 square feet of space will be allowable for the addition for furniture sales and art gallery and no more than a total of 40 employees and/or dwelling units, unless additional parking is provided within 600 feet of the property on a lease basis, in which case one additional employee or dwelling unit is permitted for each additional parking

space.

MOTION CARRIERS 5-0.

FOSTER: This next case is 15-99. Is this a new number for the case or is this a continuation from the previous number?

MILLER: We assigned it a new case number but it is really an Appeal based on the applicant's assertion that they did not get all of their questions answered in the previous hearing.

FOSTER: So it is the same number?

MILLER: It is a new number.

FOSTER: The question arises, I think we ought to ask our legal attorney, is it your thought and you all do have a memo from her in front of you a possibility about an executive session. Is it your thought Sharon that we would be discussing in executive session first to decide whether to hear the Appeal or do you feel we need to hear anything from them first?

DICKGRAFE: I think the purpose of the executive session is to explain to the Board the posture that this case is in. There is pending litigation involving the Board's actions on February 23, 1999, as well as to answer any legal issues that the Board may have regarding the posture of this case and the Board's ability or options in hearing this case or not hearing this case at this time.

FOSTER: Your thought is that it could take us thirty minutes?

DICKGRAFE: I would say twenty to thirty minutes. It is up to the Board how much time. The motion just needs to include in it the amount of time that the Board wants to be in executive session and a time to reconvene in order to comply with the open records act.

FOSTER: We are, as you know a quasi-judicial body. We have the authority to proceed into an executive session if the Board so decides. I know we have not done this since I have been here. It certainly is allowed and many Boards do that. You all have a suggested motion. I had called ahead to ask if there is a specific method of doing this and that is why Sharon has provided that for us. It is unusual to rehear a case and we really have to decide first of all whether we feel that it appropriate to rehear it. Do we have a motion than to go into executive session?

PHILLIPS: I would so move based on legal counsel recommendation to go into executive session.

FOSTER: We need to than pin, the time down whether twenty minutes or spending more than necessary time. Why don't we try twenty minutes? Would that be agreeable to you? The motion that you have, you are moving, the motion you have in front of you there? To last twenty minutes than? So the meeting will resume at 20 minutes after 2:00 p.m. What is our usual procedure here? Ask people to leave or for us to leave.

MILLER: We can go to a conference room.

DICKGRAFE: I think there needs to be a second and a vote on the motion.

PITTS: Mr. Chairmen. Just for the record the first sentence of the memo from Sharon reads, "I would like to request an executive session for the City Council meeting". Did you mean the Board of Zoning Appeals Sharon?

DICKGRAFE: Yes, I thought that had been made.

PITTS: Can you make that correction please?

FOSTER: Also as procedure on these we need to indicate whether anybody else other than the Board is to be present and I assume we ought to have our counsel present. Do we need any other member of the staff at this time?

DICKGRAFE: I do not think so.

FOSTER: So we will ask Sharon to join us in that executive session.

ROGER: I Second.

FOSTER: All those in favor say I. Motion carries.

FOSTER: It is 1:23 p.m. I will call the meeting of the Wichita Board of Zoning Appeals back together. We are going to call on the applicant and the other party and ask them to address the question of what is new? What is different and what has changed that brings us back to this group and case? We will start with Mr. Stark as the applicant and then go back to Mr. Slawson. So that each of you have a chance to address that. I am going to wait a moment to let you collect your thoughts and whenever you are ready let us know.

STEVE STARK, FLEESON, GOOING, COULSON & KITCH, L.L.C.: I am the attorney representing the applicant on this Appeal. As to the question about what new change of circumstances may have submitted from the time of earlier hearing. I am assuming that the Chairman is making reference to the BZA Appeals Rules and Regulations Article 3D. Which, as I read it, refers to when an application has been previously decided. That begs the question whether there has been a decision on the

application. In our view there was a decision by the Board, and we are not here to talk about the verbiage "entirely enclosed within a building." The Board covered that in great detail in the hearing on February 23, 1999, but did not make a decision on what we characterize as the second issue. General provision under the CUP general provision number 16. So we humbly submit that the procedurally rule cited by Counsel to the BZA does not apply to the particular issue that we framed before the Board of Zoning Appeals. If, I am going to address actual new things or new circumstances that have arisen from the February 23, 1999 meeting. Quite frankly today, we intended to resubmit for the record in a very expedited, abbreviated fashion the evidence and the testimony. We were proposing to do that by stipulation so that we would not have to consume the Boards afternoon and then a highlighted summary of what those are for the couple of Board members that are present today who were not present on the February 23, 1999 meeting. Just so that everybody would be on the same page factually. We are also prepared to discuss any procedural issues and this is just one of a handful but I understand, Chairman Foster, that you only want me to address one procedural issue at this time. So with that I will close with the only new change is circumstance that I am aware of there are actually two. One is that it appears that the Developer in question has attempted to proceed with installing the facility that was part of the Boards ruling on February 23, 1999. The other change and circumstance is that the Developer in question has submitted for the record its statement and position of what it thinks the issues are. We are prepared to address those. With that I will close your honor with the reservation of the opportunity to come back with additional procedural issues or substantive discussion on our pending appeal.

FOSTER: Thank you Mr. Stark. I would note that we actually have two members that were not here when this decision was made out of the five of us that are here today. Is there someone representing Mr. Slawson?

MARK BEAVERSTINE, ATTORNEY AT FOULSTEN Representing here today Slawson Commercial Development Company: As you are now aware there has been a law suit filed in the 18th Judicial District in the Sedgwick County Court and there are two counts within that petition. One of the counts relates to paragraph 16 of the CUP. We think that for that purpose since it is already in litigation, in District Court that this now falls within Article 8 rehearing, and your standard is whether there is any new evidence to submit which could not reasonably have been presented at the previous hearing. I think that Mr. Stark already said the only new evidence is the fact that Slawson has put an overhead door on this facility, as was suggested and ruled upon by the Board at the last meeting. We submitted a position statement in which the beginning statement we said that we do not think that this was properly before the Board, but then if you do consider it we want you to take this into account. As far as the call issue that is really all that I have to say. We are not the Appellants and we couldn't know what new evidence that they would have to present other than what Mr. Stark has just said and there is none.

FOSTER: Any questions of Mr. Beaverstine?

PHILLIPS: No attempt to further address any of the physical issues as far as the..

BEAVERSTINE: I think the first question that you have is if you are going to rehear it and if you are going to then yes we would like to comment.

PHILLIPS: I understand our position here. What I am asking and you obviously have two positions that we are dealing with some physical aspects. No other changes to the plan. No other changes, other than the overhead door is all I am asking physical improvements or any other concessions?

BEAVERSTINE: No. I think that the only thing that was commented upon by the Board at the last meeting was to have it be quote, "Fully enclosed, overhead door" and that has been installed. I do not think that it has been painted yet but I think that is on order to have done. Yes Sir.

DICKGRAFE: I do not think that you were here Randy, but my understanding is that this has already been built.

PHILLIPS: Right.

FOSTER: Thank you Mr. Beaverstine. Is there any rebuttal Mr. Stark? Or comments to Beaverstine remarks?

STARK: I think that Mr. Beaverstine and I agree on the absence of any new physical facts other than what I mentioned and I think Mr. Beaverstine agrees with that. The only thing that I am up here now on rebuttal is to correct a mis-statement, mis-conception, that somehow, we are asking for a reappeal or rehearing. No we are just asking the Board of Zoning Appeals to make a finding and state its decision on CUP general provision #16. We are not asking for a rehearing on the merits. Thank You.

BEAVERSTINE: One other thing. We contest that the interpretation or actually the appellant's argument related to paragraph 16 is an interpretation that would even come before the Board anyway. I just want to make sure we have the record clear on that.

FOSTER: May I assume that there is no other person to speak to this. Any questions of anyone else that is on the Board? Any questions of staff? I am going to ask Dale is there anything new Dale that has been brought to your attention that would cause us to rediscuss this matter that you aware of?

MILLER: No.

FOSTER: Hearing that then, we will confine the discussion to the Board.

PHILLIPS: For somebody who wasn't here I kinda looked at this from the standpoint as what the information of the facts presented. I didn't get to hear the specific arguments as far as how they were presented. I did not vote. Whichever way I would have voted does not matter here. But I guess listening to the statements presented today, and what I have read. The thing that I have to comment on is the fact that, and whether I think it is right or wrong or not, the issue of us addressing item #16 of the CUP which is public health and welfare. By the nature of motion as it is put I think that that issue was considered. Because it specifically reads here in the motion here that we have to find five facts and conditions set forth in order to approve it. But whichever way the vote is cast does not make any difference. Once that vote is cast the Board has taken the position that those items have been considered and the vote that applies to those issues.

FOSTER: This is not a variance. We are not involved with five issues.

PHILLIPS: I think the vote, when you set this in court that that is part of the issue.

FOSTER: At the time it had been brought to my attention I am the one who took out the section that referred to section #16 as not being important to the decisions that needed to be made. We do find that in the minutes. So that would be a record in the event that this did go on to court that record is there and that was not a part of the motion.

PHILLIPS: I will make a statement too. I have seen this a couple of times in the situation where it has come back to us through the judicial process and it would not have made any difference whether I think that case that I saw that which way we vote. Seeing that there is pending litigation here, whichever way we rule on that issue here today I am not so sure it is going to have an effect on it.

PITTS: Mr. Chairman, I move that sufficient evidence has not been presented from either side that had changed or in fact any for us to actually reconsider this case.

PHILLIPS: Seconds motion.

FOSTER: There has been a motion by Mr. Pitt's not to rehear the Appeal. Is that the motion? It has been seconded. Is there any discussion? I might say that my only concern is that if we do get into this we may well not be helping the case one way or the other. It may be after the fact if we were to get into it at this point and time.

PHILLIPS: My hope is on situations like this, anytime you can see the two sides to see where they are going and to find some way to compromise and solve this thing without going through the process. But as it is set forth before us today, as far as its course it is already in litigation. If the court moves or sees that we should rehear the case, at that time they ought to have a chance to represent anything else that may have changed since then or any other thing that they have decided. That is why I seconded the motion. My

position is that why we are here today is to let it to take the course that it needs to and come back to us.

FOSTER: So you are saying if the judge did decide to send it back to be heard on the merits or to hear it partially.

PHILLIPS: They would have a chance to resubmit based on any new evidence any new considerations or compromises, any other changes or any other things. I think what we have is a Developer that is trying to do something and I have seen the facility and I think they are trying to do some things right out there and they obviously have to stay within the market. On the other hand you have somebody else who feels like there is something there that is injuring them. It is a very tough call. I can see the point on both sides. I don't think that we are going to solve this issue today. I think that it needs to take its legal course or allow them to solve it outside of court.

FOSTER: Any other comments? I am going to vote for this motion and yet I have mixed reactions. My main concern is that it is already in the Court, that we may actually mess up things by further action on it. And also the fact that our Bylaws do specifically say that unless there is clearly new information we are not to reconsider it. We get into the middle of a situation. I also respect the fact that if the judge wants us to hear more then they will have a opportunity to return it to us.

MOTION CARRIES 5-0.

4. Zoning Amendments.

FOSTER: Two Thursdays ago, you will recall that all of you got amendments to the Unified Zoning Regulations. I was interested to come to the MAPC meeting and it being the next to the last item on the agenda at 4:30 p.m. As I read and re-read, I came to the section that tended to bother me the most and I took the opportunity to speak to MAPC not on behalf of the entire Board, but I said that I was speaking as an individual person. If you will give me a moment I brought with me that material. Here is what I read and if you have yours with you the one thing in regard to this on page 100 or the Zoning Amendments it talks about waivers. And it says "The Planning Commission or Governing Body may modify or waive the setback, lot coverage, height, parking, and or screening requirements in this chapter and elsewhere in this code." It means the whole thing. "Where the objectives of the comprehensive plan and good planning practices are further provided that the Planning Commission or Governing Body must set forth the specific reasons for such modifications and an explanation of how such modification or waiver meets the criteria in proposed of this section." Now, I did point out that my first concern was a technical one, I felt that the word waiver meant a lot more than modification. I think there are two different meanings there for them to just waive something that we have to go through a hearing on for variances and all that seemed a little bit sliding the topic. So I suggested changing it to modifications and leaving out the

subject of waivers. That was just a contribution to the wording of the section, but I went on to say that we have had a discussion by Mr. Alter, and I am sorry that he is not here to discuss. He has brought up our concern about the future of the Board itself. I mentioned to them that this would further reduce our workload and I suppose that we should not complain, but I pointed out that last year that we heard 30 cases. And we meet and I think we might have missed one month. I know we meet eleven times maybe twelve, I am not sure about the one month. But the point is and I pointed out to the MAPC that on that very day they were making 31 decisions in their one meeting. If you added up all the vacations, all the plat's they had they had 31 decisions they acted on in one day. We had thirty the entire year to address. Mr. Frye brought up one of the questions was the idea of combining the County BZA and the City BZA. I think Dale brought to my attention and I guess I asked him, they had 7 cases last year. Here we have two Boards that have 37 cases within an entire year and the question is, it does cost money, it cost what \$11,000 to \$12,000 to run this Board last year and matter of resources as well. I only have two other points. I do feel from my own experience as a professional in this field, that is the problem of Appeals. I do not see the MAPC handling their own Appeals. A good example would be the case that we just heard. In other words, they would have decided that sometime back and they would have then been asked to do exactly what we did to decide what the meaning was. I suppose you might say they ought to know more about it. They did it. But on the other hand, a person can Appeal to them for the change. They didn't have to come here. They could have gone back and appealed this C.U.P. to the Planning Commission presumably to make a change in the C.U.P. but this was not the applicant doing this so you understand it is not easy to do. In other words, Appeals make it I think very difficult for the MAPC to do their own Appealing. Having said that I mentioned to them and I refer to the fact that our own particular business had like fifty-two clients. The variance thing does concern me that they could waiver or modify that very easily. We go through some trouble a variance is a hardship. It seems to me that some appropriate discussion is appropriate to make that decision. Why don't we ask Dale unless there is any comments here to pick-up from there? This does appear on the Planning Commission agenda, Thursday, along with the other amendments.

MILLER: I guess the first thing and I point out is that the reason staff is looking at this is within CUP'S with tentative plans, the developer comes in and they design the plan. It goes to the Planning Commission and the Governing Body and it is adopted and then everybody lives with those rules. But over time, as the market changes or what they thought was going to go there isn't going to go there. Then a new client comes in and the parcel that they had designed for the original client no longer works for the new guy and so they need to make modifications. What we have been doing in the past is if it involved a modification that required a variance, as we know it today, within the CUP then they go to the Planning Commission. They ask for either an Amendment and they have a full-blown hearing or if it is minor in nature staff can make an Adjustment to the CUP. And then it is called an Administrative Adjustment and it takes ten days and then it is done. But they still have to come before you to get the full-blown variance. So in some respects what we are doing is putting the developer or that applicant in double jeopardy.

Particularly if it requires a full-blown amendment they go to the Planning Commission it gets approved there. But then they have to come here and wait for your approval. There is the time element that is involved, from the time they file and go through the MAPC and then they file and go through BZA before they know whether they can do it or not. That is part of the issue and we were just trying to cut down on the number of hearings that a particular project would have to have in order to know whether they can be approved for this. The other thing is, this section on page 100 and the waivers that are discussed are the modifications only apply to CUP's. It is not across the board, it is just CUP stuff.

FOSTER: I respect that point. The thing that attracted my attention was it says in this chapter and elsewhere in this code. That is really what triggered my thoughts about this whole thing that it was taking the whole code.

MILLER: If you look at the entire context. This particular section is under the CUP Community Unit Plan overlay district section. It is Section number II in the Code and it is subsection number II Article 4.

FOSTER: In other words a CUP has to have some ability to have modification or it wouldn't even be a CUP. In other words CUP is almost like a big variance if you want to think of it like so. There has to be passage in like that. I just was concerned when it said elsewhere in this code that is the whole book.

MILLER: I do not think that there is intention that we would be going to the Planning Commission to do what you guys ordinarily see as a variance to front yard setback.

FOSTER: Should that be reworded because of that?

MILLER: I think what it is saying is with respect to CUP'S and only CUP'S that it would go to the Planning Commission. But if it was just a straight zoning district with no overlay on it those would still come to you and be reviewed just like you do today. It is just the Community Unit Plans where we are trying to avoid the double hearing and time delay.

FOSTER: I have no problem with that I just don't read it that way. You understand, as long as it can be assured that it is related only to the CUP where it probably ought to be I do not have a problem with it.

MILLER: At least that is the way I read it anyway.

PITTS: Couldn't we add where it relates to CUP'S and suggest to the MAPC that they adopt the modifications? If we are inclined to go along with it, if it only pertains to CUP'S.

FOSTER: I could see somebody reading this out of context as maybe I was doing I think Mr. Pitt's has a very good point. Just to reiterate.

MILLER: A clarification that it only applies to CUP'S.

FOSTER: You have a problem Dale?

MILLER: No.

FOSTER: Any other discussion on that then? There has to be something in and I think Marvin agreed to call it modification, right, instead of waivers?

MILLER: I do not see a problem.

FOSTER: I do not know that you where there. Just leave out waiver entirely. Why don't we go on? I bring up the fact that we will be having elections soon and when July 1st comes it will affect our membership here. I do not know how many members will be effected. Mr. Alter, and who else? Has anyone talked about staff wise about the idea of combining the Boards or do you have any feeling on that Dale?

MILLER: No. Not since we initially presented that to you. Then it looked like we were running into some administrative problems and we had not talked about it at the staff level at least for several month's so at this point I do not think there is any serious consideration at this point.

FOSTER: One thing that Marvin did mention to me that perhaps when they have 31 items on the agenda they were there from 12:00 to after 5:00 p.m. It is a long afternoon. I pointed out to them at their meeting that some of the conditional uses and the used car lots and the childcare and something related to the church. Those used to come before this Board and we do not have those anymore and so it lengthens the meeting at MAPC. The thought was to maybe have us talking to them to discuss this item mutually what the problem is. What we have talked about here does not hold up proceeding that new list on Thursday. In other words how this Board operates is not effected by the clarification of this particular item. Is there further discussion then? Or do want further discussion of the Board's responsibility and I think all of you remember what Keith has talked about.

PITTS: Who would make that ultimate decision. Would it not be the appointing authorities?

FOSTER: Any city that has zoning must have some kind of Board of Zoning Appeals.

PITTS: Subject to combined activities of the Board of Zoning Appeals and Planning Commission, which perhaps the Board of Zoning Appeals being a committee of. Would not that be the responsibility of the authority of the Governing Body?

FOSTER: Those groups that have combined it, they simply recess the Planning Commission meeting and organize as a Board of Zoning Appeals. They take a separate set of minutes, they do what we do and then they come back and reconvene the Planning Commission if they need to and continue.

PITTS: A separate action within the same individuals.

FOSTER: Some of them thought that MAPC would do this. Some of them only meet for the Board of Zoning Appeals because that is all they hear at that time. But that would be true for MAPC.

MARVIN KROUT – DIRECTOR: I am kind of walking in late so I do not know what you are talking about .

FOSTER: We left this waiver and modifications wording and Dale has certainly convinced me that this will only apply to CUP'S. Mr. Pitt's made a suggestion that it be reworded to at least make it clearer that it only applies to CUP'S only.

KROUT: Yes. That was the intent and we did have language that was suggested by Joe Lang, just before the hearing of the Planning Commission last time to clarify that.

PHILLIPS: Bickley, you are getting me confused. We had talked about that clarification. I thought what you were questioning to Marvin was about this Board being incorporated with the MAPC.

FOSTER: I was just telling him that this thing as far as I am concerned is over with. The question raised at the meeting as to whether there should be any change in what the BZA does? Is there any discussion at the County level on this? The County Board of Zoning Appeals?

KROUT: You don't have to consolidate City and County government to do that. You have a consolidated Planning Commission. We have a consolidated zoning code, consolidated Subdivision regulations. So it is kind of natural for the City and County to have one zoning code. To review together that especially since your workload and the Counties workload has lightened as a result not only of moving some things to the Planning Commission but of doing more things administratively that used to require going to the Board of Zoning Appeals. In fact I can see some point in the future to attach the sign code amendments we will be able to do some sign code adjustments administratively. There is a problem with the load on the MAPC. We thought we had a solution, which was to divide the responsibilities of the MAPC so that all fourteen of them would not have to be involved in every subdivision case, every zoning case, and every planning item. But so far they have not come around to accepting that, that it is a good idea. If they don't do that, we do have a problem and maybe we need to visit with

the Planning Commission, are they satisfied to continue with this very heavy workload? If they are not there is a possibility of delegating some of the things that were conditional uses back to the Board of Zoning Appeals, but even if we did I think the County Board of Zoning Appeals has so little work, that the idea of combining them makes sense. All I did was to approach the subject informally with County Commissioners but have never talked about it at a workshop in any kind of detail. My main concern about how to create a City County Board of Zoning Appeals is, I don't want to create another 14 member Board. That is one of the weakness of the MAPC and yet how are we going to get the City Council and County Commission to each appoint an odd number of people. Because if you have a smaller group I think it is more important to have an odd number of people. And how are we going to get them not to each have their own appointments? I have a solution to that problem. Maybe you could help me. I am probably going to be recommending consolidating the City and the County BZA's.

FOSTER: Seven seems to be a pretty good number doesn't?

MILLER: It is just that we usually only have four here. With the seven it seems like there is always two people gone and often times there is three gone so you end up needing an unanimous vote.

PITTS: Actually I think that began to surface when our workload decreased because prior to that we all would be here and have a full-house.

MILLER: I guess I am basing that on my last two to three months or so being over here.

PHILLIPS: If we had six or seven or eight cases on the agenda I think everybody would realize it would take a little more discussion to resolve these things. But also I think you are looking at the situation some cases some members have been on and off for a long time. It is busy. You ought to look at the market and the business that we are in. A lot of us are a lot busier just based on the economy right now.

PITTS: I would agree to that.

ROGERS: It has been very busy.

FOSTER: What is the character of the County. Who staffs them? Where do they meet?

MILLER: I staff them. They meet over in the County Commission Room, in the County Commission Chambers. There are five members and we have one vacancy right now. Most of their workload here recently has been Appeals. In fact, I think we are working on the fourth of fifth one.

PHILLIPS: Does it pay better than this Board?

MILLER: I think it is the same. The Appeals are about, one guy filed two separate appeals on two separate pieces of property trying to claim that junk vehicles were exempt because they had previously been used in an agriculture operation. Another guy is a greenhouse limited manufacturing outfit and he is claiming that he is non-conforming use and the County Zoning Administrator says that he does not have any proof that he was there doing this limited manufacturing prior to the County-wide adoption of the zoning. He is appealing that.

FOSTER: How important is it to have somebody for creditability sake. I am sure people come here and want to see some people that are outside of the City of Wichita. Shall we say represent them so to speak.

KROUT: I think it is the same issue as with the MAPC and the zoning cases. I think if you have a membership that has got at least some representation appointed by the County then you solve that problem. On the other hand the County Commissioners have mostly appointed people who live in the City of Wichita. They haven't been especially concerned about appointing people who are outside the city limits.

MILLER: On the County BZA they all live outside the city limits. The one Commissioner appointed someone and then it turned out that they lived in one of the small cities and so they withdrew that appointment and that is why we have the vacancy.

KROUT: If you try to do a joint BZA you could guarantee that that would happen it just doesn't happen on the MAPC because it is not required. I think there needs to be a Board of Zoning Appeals separated from MAPC to deal with appeals. I think we are going to see more of them and I think that is just a trend and part of our legalized trend, if you don't mind me saying that Sharon. People are contesting everything and so we have people who were going to be on your agenda contesting the way that we interpreted out by Willowbend where the guys wanted to do some apartments. They were going to contest the way that we interpreted the building height and how we calculate the lot size. So anytime someone sees the loophole they are going to look for it. There is going to be a trend and that is going to be an increasing issue with us. There needs to be that relief value and BZA as a separate body needs to look at those and look at variances. I think that variances ought to be special exception to where the rules don't apply and I am not sure the Planning Commission has the time to deal with the variances. I just think that there are some minor variances that we could deal with administratively and I think that there are other times when it doesn't pay to go through a dual hearing process. Send someone through the Planning Commission and then have to come back to the BZA if you have a public hearing you may as well for the CUPS could have been decided with the one case.

FOSTER: I get the impression that MAPD is busy. But I assume that you have enough to do and it seems to me that it would cost less to have one Board. What staff is there?

MILLER: Rose and I, the County Counselor. The only meetings that I have had with them have been appeals. Mr. Hughey is their attorney.

FOSTER: Well we talk about the cost of government and it seems to be the logical thing to save some money. This is a joint meeting where MAPC meets. A joint budget. Any other thing going on that would have any collator problems of raising that issue with any of the budget issues or anything?

PHILLIPS: We are straying from item number four. Item four was the overview of the proposed Unified Zoning Amendments. I hate to say this but I really need to get going. If you want to carry on without me that is fine.

FOSTER: We are going to have some members change here probably July 1st, 1999 and I thought it desirable to start a discussion and I had hoped that Mr. Alter would be here.

PHILLIPS: I guess we should wait to see who is appointed. Maybe you should have this discussion after you get a new Board. I really need to go.

KROUT: I think the input from this Board is useful for us as we try to figure out the procedure of one Board.

FOSTER: It seems to me from this discussion there might be some advantage in at least thinking of the idea and combining the two Boards. Whether some...

PHILLIPS: You are talking two BZA to one.

FOSTER: Yes. As a matter of staff time, efficiency, cost to do it, membership time and all that. What do we have for our next meeting Dale?

MILLER: We have three cases two are compatibility setback variances and I can't remember the third one.

PITTS: I wouldn't have any problem at all with overtures and proper people. Potential possibility of combining the County and the City BZA and it looks like that would be the natural position to take.

DICKGRAFE: I don't think and correct me if I am wrong Marvin that a joint meeting would necessarily be necessary. I think Marvin knows that the general thoughts of the Board. Is that certainly that we are not opposed to looking at joining or consolidating but that is ultimately a decision that Marvin is not going to make, you all can't make, I can't make, but certainly staff can provide that information to the appropriate people.

KROUT: I say our next step ought to be if we haven't is to talk with the County BZA members. About it and then our next stop is probably the County Commission and

somewhere along there try to figure out a way to have a reasonable number of people wanting a method of doing that. That is going to satisfy both the City Council and the County Commission.

FOSTER: Do we hear a motion then to request the staff to make that overture to the Sedgwick County Board of Zoning Appeals?

PITTS: Wouldn't we have to touch base with our appointing authorities, the City Council members or would staff take care of that?

KROUT: We would take care of that.

MOTION: PITTS moved and SWANN seconded to request the staff to pursue this issue to ascertain their opinion on joining the County BZA and the City BZA.

MOTION CARRIES 5-0.

Meeting Adjourned 4:00 p.m.